

REMARKS/ARGUMENTS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claim 1 has been amended to note that the maximum contact time is about 2 minutes. Support is found original claim 7. Further, claim 1 has been amended to require that the conditioning agent be present both in part ai and aii. This conditioning agent is identified as a silicone. Support is found in Examples 1 and 3 where a dimethiconol and a silicone microemulsion are present in both parts. Still further, claim 1 now specifies that the treatments are "with an identically formulated mixture". Support is found in the Examples at page 28 (lines 17-20).

Objection was raised to claim 2 because the words in the lines were said to be crowded too closely together. Applicants have amended claim 2 placing each recited dye intermediate on a separate line.

A mis-spelling was indicated with respect to the term "phenetole" appearing in a pair of listed dyes within claim 2. Applicants note that "phenetole" is not a mis-spelling. This moiety is an ethoxy benzene.

Objection was raised to claim 29, wherein the second "part ai" should have been "part aii". Applicants have corrected this typographical error.

New independent claim 35 recites a kit which practices the method of independent claim 1. Support for the kit may be found at page 24 (line 15) bridging to page 26 (line 25) and original claim 1.

Claims 1-34 were provisionally rejected for obviousness-type double patenting over claims 1-9 and 13-40 of co-pending application No. 10/034,511, claims 1-23 of co-pending application No. 10/096,812, claims 1-26 of co-pending application No. 10/095,657 and claims 1-2 and 4-28 of co-pending application No. 10/196,130. Applicants herewith submit a Terminal Disclaimer which is believed to overcome this rejection.

Claims 1-5, 7-28 and 30-31 were rejected under 35 USC §103(a) as unpatentable over Casperson et al. (U.S. Patent No. 5,376,146) in view of Lapidus et al. (U.S. Patent No. 4,104,021). Applicants traverse this rejection.

The present invention is directed at the gradual permanent dyeing of hair in a manner to minimize hair damage. The same formula is utilized in a series of consecutive treatment cycles. Each cycle includes a rinsing of the mixture from the hair and is spaced about 8 hours to 30 days apart from a previous or later treatment. Furthermore, contact on the hair is limited to no longer than "about 2 minutes".

Applicants' gradual method achieves essentially the same color performance but less hair damage after a series of two minute treatments than the traditional single cycle with substantially longer contact times. Treatment of the hair according to the present invention imparts a lower wet combing force, higher break stress, low amounts of cysteic acid (indicating less hair damage), good hair color change, less color fading, and more intense color.

Casperson et al. was introduced as teaching a method for dyeing hair. The Examiner recognized this reference fails to disclose two important features of the claims. These include absence of disclosure with respect to the time interval of 8 hours to 30 days between treatments and the contact period between 1 minute and 2 minutes.

Lapidus was introduced as teaching a process for dyeing hair comprising applying a mixture of a colorant oxidative solution in successive applications for a time period of "up to 5 minutes" and use repeated once every 2 to 8 weeks.

A close reading of Lapidus will reveal that the shortest disclosed contact time is 5 minutes. See column 3, (lines 8, 52 and 67) and column 4 (lines 54 and 59). By contrast, applicants claim a much shorter contact time of about 2 minutes maximum. This brief contact, preferably through an ordinary shampoo treatment insures minimization of damage.

Lapidus does not use an identical colorant mixture for successive treatments. He gradually increases the amount of oxidant solution in a series of treatments. See column 3, (lines 40-47). The reference method is illustrated under Example 1. Therein the first treatment utilizes 2.5 cc oxidant solution. This is followed in the next cycle by an 5 cc oxidant solution. Finally a 10 cc oxidant solution is applied. See column 4 (lines 45-59). By contrast, applicants in each treatment cycle apply the same formula colorant mixture. There is no step-up increase of oxidant from one treatment cycle to another.

A combination of Casperson et al. in view of Lapidus et al. would not render this invention obvious. Casperson does not teach the slow gradual treatment of hair through a number of cycles which impart ever increasing color intensity to the hair. While Lapidus is concerned with gradual coloration, the method is quite distinct from the presently claimed invention. Lapidus employs a contact cycle of at least 5 minutes minimum, while the present claims are no longer than about 2 minutes. Further, Lapidus teaches that each treatment cycle must increase the level of oxidant. By contrast, applicants operate with the same colorant mixture within each of the treatment cycles. The Examiner has not set forth a prima facie case. The references lack the method steps of 2 minute maximum contact time and utilizing the same composition (and concentrations) for consecutive treatment cycles. Accordingly, the combination of Casperson et al. in view of Lapidus et al. would not render the instant invention obvious.

Another feature of the amended independent claims is the presence of a conditioning agent which is a silicone in both parts of the colorant mixture. Not only is a silicone present in the dye intermediates shampoo base but also in the oxidative compound (developer) part. Lapidus et al. does not include any type of conditioner within the disclosed two-part hair colorant system. Casperson et al. mentions use of a cationic surfactant useful as a conditioner in a two-part hair coloring composition. See column 2, lines 4-5. This cationic surfactant is placed only in the dye intermediate portion. It is not placed in the developer. See the formulas under Examples under column 11. Silicone compounds are not mentioned in this reference. Even if silicones were to be equated with cationic surfactants as conditioner, Casperson teaches use of the conditioners only in the dye intermediates part but not in the developer (peroxide) part. Here the Examiner has also failed to present a prima facie case of obviousness.

Claim 6 was rejected under 35 USC §103(a) as unpatentable over Casperson et al. (U.S. Patent No. 5,376,146) in view of Lapidus et al. (U.S. Patent No. 4,104,021) and further in view of Duffer et al. (U.S. Patent Application No. 2003/0028979 A1). Applicants traverse this rejection.

Duffer discloses a two-part composition for coloring hair. A variety of silicones including the volatile ones are recorded to be useful as conditioning agents. These silicones are formulated into the developer (peroxide) composition. See column 6, paragraph [0087]. There is no disclosure that a silicone be present both in the dye intermediate part and also in the developer. None of the examples show the presence of a silicone in both parts. The Examiner has not presented a prima facie case of obviousness with respect to this aspect.

Furthermore, Duffer does not remedy the basic deficiencies of either Casperson or Lapidus. None of the three references discloses a contact time of only about two minutes maximum. And neither do any of the references teach multiple repeat treatment with the

same treatment composition in successive applications. The only reference disclosing repetitive treatment is that of Lapidus. This patent requires an increased concentration of oxidizer in successive applications. The presently claimed invention utilizes an identical composition for treatment throughout every successive application. Based on all these considerations, a combination of the art would not render the claims obvious.

Claim 29 was rejected under 35 USC §103(a) as unpatentable over Casperson et al. (U.S. Patent No. 5,376,146) in view of Lapidus et al. (U.S. Patent No. 4,104,021) and further in view of Boulton (GB 1 289 712). Applicants traverse this rejection.

The Examiner's citation of Boulton identified as EP 1 289 712 should actually be GB 1 289 712, a patent belonging to Dart Industries. The Examiner is requested to correct U.S. PTO Form 892 under reference "N" to reflect the proper country.

Boulton does not remedy the basic deficiencies of the primary and secondary references. Boulton does not disclose a method for gradually coloring hair over a series of progressive treatments, especially through the use of a consumer's regular shampoo and/or conditioner ritual. The reference does not disclose contacting the hair with a colorant mixture for no more than about 2 minutes in each application cycle.

Claim 32 was rejected under 35 USC §102(b) as anticipated by Nillson (EP 0 146 350). Applicants traverse this rejection.

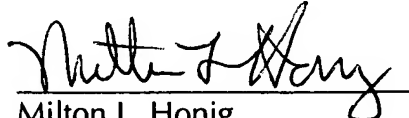
Claim 32 has been canceled. This rejection would now appear to be moot.

Claims 32-34 were rejected under 35 USC §103(e) as anticipated by Duffer et al. (U.S. Patent Application No. 2003/0028979 A1). Applicants traverse this rejection.

Independent claim 32 has been canceled. For this reason it is considered that this rejection is moot.

In view of the forgoing Amendment, Terminal Disclaimer and comments, applicants believe that the claims are now in condition for allowance and such action is herewith requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Milton L. Honig", written over a horizontal line.

Milton L. Honig

Registration No. 28,617

Attorney for Applicants

MLH:sc/sm
201-840-2403